No. 5129

IN THE

United States Circuit Court of Appeals

FOR THE

NINTH CIRCUIT

DOLLAR STEAMSHIP LINE, a Corporation,
Appellant,

vs.

JEANNETTE A. HYDE, United States Collector of Customs, Port of Honolulu,
Appellee.

BRIEF FOR APPELLEE

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STATEMENT OF THE CASE

This is an appeal from the decree of the District Court of Hawaii sustaining the demurrer to appellant's second amended complaint. The appellant elected in open court not to further amend its complaint, and later filed a written election not to amend its second amended complaint and to stand on the pleadings. (R. pp. 30, 31).

The second amended complaint alleges that on or about the 17th day of November, 1925, at Yokohama, Japan, one Seiichi Yamate, an alien holding a permit to re-enter the United States, being a resident of and

having been domiciled in the Territory of Hawaii for a continuous period of eighteen years, and said residence and domicile having been unrelinquished, and said alien being desirous of returning thereto after a temporary absence abroad of approximately three months, became a passenger for hire aboard the S. S. "President Lincoln," said vessel being bound for the port of San Francisco, California, via the port of Honolulu, and owned and operated by appellant. That on the 26th day of September, 1925, said vessel arrived at the port of Honolulu, the destination of said alien, and he was refused admission to the United States for the reason that he was afflicted with a loathsome and/or contagious disease, to wit, leprosy; that "it appeared to the satisfaction of the Secretary of Labor that said alien, so brought to the United States as aforesaid, was afflicted with said disease at the time of foreign embarkation as aforesaid, and thereupon said secretary determined that said disease might have been detected by means of a competent medical examination at said port of embarkation." (Paragraph VII, second amended complaint) (R. p. 20).

That upon such determination by said Secretary as aforesaid, the defendant, as Collector of Customs at the port of Honolulu, imposed against the plaintiff a fine of $1,000.00 and the additional sum of $40.00 for the transportation of said alien from Yokohama, the initial point of departure to the port of Honolulu; that upon the imposition of the fine the plaintiff, to effect clearance of the vessel in question, paid to said

defendant as Collector as aforesaid under duress and protest, said fine of $1,040, for the recovery of which sum this action was instituted. The grounds of demurrer are that the complaint does not state a cause of action.

ARGUMENT

I

ALL ALIENS AFFLICTED WITH A LOATHSOME OR DANGEROUS CONTAGIOUS DISEASE ARE MANDATORILY AND UNCONDITIONALLY EXCLUDED FROM ADMISSION TO THE UNITED STATES.

Section 3 of the Immigration Act of 1917 provides:

> "That the following classes of aliens shall be excluded from admission into the United States: all * * * persons afflicted with tuberculosis in any form or with a loathsome or dangerous contagious disease * * * ."

II

THE PROHIBITION AGAINST THE ADMISSION OF ALIENS APPLIES TO ALL ALIENS IRRESPECTIVE OF PREVIOUS RESIDENCE OR DOMICILE IN THE UNITED STATES.

The statute law of the United States, prior to the Act of 1903, relating to the exclusion of aliens, outside of contract laborers, was directed solely against alien immigrants and not against alien residents returning after a temporary absence.

> Moffitt v. United States, (C. C. A. 9) 128 Fed. 375;
>
> Lapina v. Williams, 232 U. S., 78, 86.

The act of 1903 brought together in one Act the scattered legislation theretofore enacted in regard to

the immigration of aliens into the United States and deliberately eliminated the word "immigrant" and other equivalent qualifying phrases, and made the prohibition against the admission of aliens to apply to all aliens whose history, conditions and characteristics brought them within the descriptive clauses, irrespective of any qualification arising out of a previous residence or domicile within this country.

Lapina v. Williams, 232 U. S. 78, 91;

Hee Fuk Yuen (C. C. A. 9) 273 Fed. 10, 13.

The Act of 1924 defines the term "Alien" as follows:

"Sec. 28, as used in this Act—

(b) The term 'alien' includes any individual not a native-born or naturalized citizen of the United States, but this definition shall not be held to include Indians of the United States not taxed, nor citizens of the islands under the jurisdiction of the United States."

It is said in *Lapina v. Williams,* supra, on page 92, that "none of the excluded classes (with the possible exception of contract laborers, whose exclusion depends upon somewhat different considerations) would be any less undesirable if previously domiciled in the United States." On page 91 of the same case the Court said:

"Upon a review of the whole matter, we are satisfied that Congress, in the Act of 1903, sufficiently expressed, and the Act of 1907 reiterated the purpose of applying its prohibition against the admission of aliens, * * * to all aliens whose history, condition or characteristics brought them within the descriptive clauses, irrespective

of any qualification arising out of a previous residence or domicile in this country."

In the case of *Lewis v. Frick*, 233 U. S., 291 at 296, 297, the Court, after approving the decision in *Lapina v. Williams*, supra, held that the fact that an alien had been domiciled for six years or more in this country, he remaining still an alien, did not change his status so as to exempt him from the operation of the Immigration Act; and that if he departed from the country, even for a brief space of time, and on reentering brought into the country a woman for the purpose of prostitution or other immoral purposes, he subjected himself to the operation of the clauses of the Act that relate to the exclusion and deportation of aliens, the same as if he had had no previous residence or domicile in this country.

The construction adopted in *Lapina v. Williams*, supra, and *Lewis v. Frick*, supra, is applicable in the instant case. If Seiichi Yamate had returned to the United States free from the disease of leprosy, he might have reasonably expected to be readmitted, but returning afflicted with leprosy, which brought him within an excluded class, he could not expect to be permitted to reenter.

Hee Fuk Yuen, supra, states the rule, that the fact that an alien acquires a lawful domicile in the United States does not give him a status which entitles him as a matter of right to return after a temporary absence from the country.

III

A PERMIT TO REENTER THE UNITED STATES AUTHORIZED BY THE ACT OF 1924, CONFERS NO RIGHTS OF REENTRY.

Section 10 of the Act of 1924 authorizing the issuance of the permit, in subdivision (f) thereof, limits the effect thereof as follows:

> "A permit issued under this section shall have no effect under the immigration laws, except to show that the alien to whom it is issued is returning from a temporary visit abroad; but nothing in this Section shall be construed as making such permit the exclusive means of establishing that the alien is so returning."

IV

CONGRESS, LEGISLATING UPON MATTERS WITHIN ITS CONTROL, MAY IMPOSE OBLIGATIONS AND SANCTION THEIR ENFORCEMENT BY MONEY PENALTIES AND GIVE TO EXECUTIVE OFFICERS POWER TO ENFORCE SUCH PENALTIES.

The above rule has been so completely affirmatively settled as to require only reference to some of the decided cases.

Oceanic Steam Navigation Co. v. Stranahan, 214 U. S. 320, 338-342;

C. B. & Q. Ry. v. United States, 220 U. S., 559, 578;

Selective Draft Cases, 245 U. S., 366, 389;

United States v. New York S. S. Co., 269 U. S. 304, 313;

McDowell v. Heiner, 9 F2, 120.

V

DECISIONS OF EXECUTIVE OFFICERS, ACTING WITHIN POWERS EXPRESSLY CONFERRED BY CONGRESS, AND DUE PROCESS OF LAW, AND ARE CONCLUSIVE AGAINST ANY INQUIRY BY THE COURTS.

In *Fong Quong Hay v. Nagle*, 17 F2, 231, this court said: "* * * the statute law and the plain holding of all the decisions * * * say that the findings of the immigration officers on questions of fact affecting the right of an alien to enter this country are conclusive against any inquiry by the courts, and * * * that there is no lack of due process of law."

> Lim Jew v. United States, (C. C. A. 9) 196 Fed. 736, 740;
>
> Lewis v. Frick, 233 U. S. 273.

In construing Section 9 of the Act of 1903, identical in all parts material with Section 26 of the Act of 1924, in imposing a penalty upon a transportation company for bringing excluded aliens into this country, the court in *Oceanic Navigation Company v. Stranahan*, supra, at page 342, says:

> "In view of the absolute power of Congress over the right to bring aliens into the United States we think it may not be doubted that the act would be beyond all question constitutional if it forbade the introduction of aliens afflicted with contagious diseases, and, as a condition to the right to bring in aliens, imposed upon every vessel bringing them in, as a condition of the right to do so, a penalty for every alien brought to the United States afflicted with the prohibited disease, wholly without reference to when and where the disease originated. It must then follow that the provision contained in the statute is of course

valid, since it only subjects the vessel to the exaction when, as the result of the medical examination for which the statute provides, it appears that the alien immigrant afflicted with the prohibited malady is in such a stage of the disease that it must in the opinion of the medical officer have existed and been susceptible of discovery at the point of embarkation."

United States v. New York S. S. Co., supra.

Section 9 of the Immigration Act of 1917 as amended by Section 26 of the Act of 1924, reads as follows:

"That it shall be unlawful for any person, including any transportation company other than railway lines entering the United States from foreign contiguous territory, or the owner, master, agent, or consignee of any vessel to bring to the United States either from a foreign country or any insular possession of the United States any alien afflicted with idiocy, insanity, imbecility, feeble-mindedness, epilepsy, constitutional psychopathic inferiority, chronic alcoholism, tuberculosis in any form, or a loathsome or dangerous contagious disease, and if it shall appear to the satisfaction of the Secretary of Labor that any alien so brought to the United States was afflicted with any of the said diseases or disabilities at the time of foreign embarkation, and that the existence of such disease or disability might have been detected by means of competent medical examination at such time, such person or transportation company, or the master, agent, owner, or consignee of any such vessel shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $1,000, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival for each and every violation of the

provisions of this section, such latter sum to be delivered by the collector of customs to the alien on whose account assessed."

VI

THE SEVENTH PROVISO TO SECTION 3 OF THE ACT OF 1917 DOES NOT EXEMPT FROM THE EXCLUDING PROVISIONS OF THAT SECTION RETURNING ALIENS WHOSE HISTORY, CONDITION OR CHARACTERISTICS BRING THEM WITHIN THOSE PROVISIONS EXCLUDING ALIENS FROM THIS COUNTRY.

Section 15 of the Act of 1917 provides that proper immigration officials shall board all incoming vessels and there inspect all aliens brought in or order a temporary removal of such aliens for an examination for the purpose of determining the aliens' eligibility to enter the United States. Such a temporary removal shall not be considered a landing. Section 16 provides that a mental and physical examination of all arriving aliens shall be made by medical officers of the United States Public Health Service, who shall certify for the information of the immigration officers and the boards of special inquiry any and all physical and mental defects or diseases observed by said medical officers in any such aliens. This section further provides for an inspection, other than the physical and mental examination, by immigrant inspectors, of aliens, including those seeking admission or readmission to or the privilege of passing through or residing in the United States and every alien who may not appear to the examining immigrant inspector at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for examination in relation thereto by a board of special inquiry. In event of rejection by the board, in all cases where

an appeal to the Secretary of Labor is permitted, the alien shall be so informed and shall have the right to be represented by counsel or other advisor on such appeal. Section 17 provides that in every case where an alien is excluded by the board of special inquiry the decision shall be final unless reversed on appeal to the Secretary of Labor: "Provided, that the decision of a board of special inquiry shall be based upon the certificate of the examining medical officer and, except as provided in Section Twenty-one hereof, shall be final as to the rejection of aliens affected with tuberculosis in any form or with a loathsome or dangerous contagious disease * * * ." Section 21 provides that any alien liable to be excluded * * * because of physical disability other than tuberculosis or a loathsome or dangerous contagious disease may, if otherwise admissible, nevertheless be admitted in the discretion of the Secretary of Labor upon giving a suitable and proper bond holding the United States, states and territories, etc., harmless against such alien becoming a public charge. Section 18 provides that no alien certified, as provided in Section 16, to be suffering from tuberculosis or from a loathsome or dangerous contagious disease, other than one of quarantinable nature, shall be permitted to land for medical treatment thereof in any hospital in the United States, unless the Secretary of Labor is satisfied that to refuse treatment would be inhumane or cause unusual hardship or suffering, in which case the alien shall be treated in the hospital under the supervision of the immigration officials at the expense of the vessel transporting him.

The purpose of the enactment of those provisions excluding aliens afflicted with a loathsome or dangerous contagious disease, and providing for the imposition of a penalty on vessels bringing to this country aliens so afflicted was and is to guard against the dangers arising from the wrongful taking on board of aliens so afflicted, not only to other passengers of the vessel, but ultimately to the people of the United States, a danger arising from the possible admission of aliens who might have contracted the disease during the voyage, and yet be entitled to admission because apparently not afflicted with the prohibited disease, owing to the fact that time had not elapsed for the manifestation of its presence.

From those provisions and the decisions it is plainly evident that the intention and purpose of Congress in so enacting was to positively and permanently exclude all aliens so afflicted.

The immigration statutes are replete with exceptions and provisos permitting members of many excluded classes to land under conditions stated or at the discretion of the Secretary of Labor, but nowhere is there a proviso or exception favoring the admission of one afflicted with a loathsome or dangerous contagious disease, nor is there discretionary power given the Secretary of Labor to permit the landing of an alien so afflicted save for medical treatment and then only when refusal would be inhumany or cause unusual hardship or suffering.

It is the contention of appellant that the proviso at the end of Section 9 of the Act of 1917 (Section 26

of the Act of 1924) and the Seventh Proviso of Section 3 of the Act of 1917 entitle the alien to land and relieve the transportation company from the penalty imposed.

The Seventh Proviso to Section 3 is as follows:

> "That aliens returning from a temporary absence to an unrelinquished United States domicile of seven consecutive years may be admitted in the discretion of the Secretary of Labor, and under such conditions as he may prescribe."

Section 3 positively, mandatorily and unconditionally excludes aliens afflicted with a loathsome or dangerous contagious disease, and while the immigration laws in many cases loosen the bonds of exclusion and grant wide discretionary powers to the Secretary of Labor to admit members of excluded classes in cases where he may deem it wise and humane to do so and under such conditions as he may determine. But nowhere is there an exception or a proviso favoring an alien afflicted as is the alien in this case. In those cases wherein an exception is permitted, and discretion is given the Secretary of Labor relative to admitting aliens of excluded classes, those afflicted with a loathsome or dangerous contagious disease are uniformly excepted from those favored by such exceptions. The Seventh Proviso does not entitle an alien returning to an unrelinquished domicile as a matter of right to enter the United States. His entry depends wholly upon the discretion of the Secretary of Labor. An entry under that proviso can be only a conditional one and under such conditions as the Secretary may prescribe. The rule relative to return-

ing aliens stated in *Lapina v. Williams*, supra, and in *Lewis v. Frick*, supra, that Congress intended the prohibition against the admission of aliens to apply to all aliens whose history, condition or characteristics brought them within the descriptive clauses irrespective of any qualification arising out of a previous residence or domicile in this country, is clearly applicable. Had the alien in this case returned to this country well, mentally and physically, and not tainted or afflicted with a disease or condition mandatorily excluding him, and with nothing against him but his alienage, he might have reasonably expected the Secretary of Labor to admit him. But as he returned afflicted with a disease positively and unconditionally excluding any alien from admission as did the alien in the case of *Lewis v. Frick*, supra, the mere fact that he had, before going away, acquired a residence or domicile in this country he could not have anticipated admission.

VII

A TRANSPORTATION COMPANY BRINGING IN AN ALIEN OF AN EXCLUDED CLASS IS SUBJECT TO THE PENALTY PROVIDED IRRESPECTIVE OF THE ALIEN HAVING PREVIOUSLY ACQUIRED A DOMICILE WITHIN THIS COUNTRY.

Section 9 of the Immigration Act of 1917 as amended by Section 26 of the Act of 1924 provides:

> "Sec. 9. That it shall be unlawful for any person, including a transportation company, * * * or the owner, master, agent or consignee of any vessel to bring to the United States from a foreign country * * * any alien afflicted with * * * tuberculosis in any form, or a loathsome or dangerous contagious disease, and if it

> shall appear to the satisfaction of the Secretary of Labor that any alien so brought to the United States was afflicted with any of the said diseases or disabilities at the time of foreign embarkation, and that the existence of such disease or disability might have been detected by means of competent medical examination at such time, such person or transportation company, or the master, agent, owner, or consignee of any such vessel, shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $1,000, and in addition a sum equal to that paid by such alien for his transportation from the initial point of departure, indicated in his ticket, to the port of arrival for each and every violation of the provisions of this section, such latter sum to be delivered by the collector of customs to the alien on whose account assessed."

This section conclusively determines the liability of the appellant unless relief is had through the proviso added to the end of that section, which is as follows:

> "Provided further, that nothing contained in this Section shall be construed to subject transportation companies to a fine for bringing to ports of the United States aliens who are by any of the provisos or exceptions to Section Three hereof exempted from the excluding provisions of said section."

The appellant seems to contend that this proviso relieves him from the penalty provided in that section and this contention seems to be predicated upon the further contention that the Seventh Proviso to Section 3 relieves the returning alien from the exclusion provisions of that section.

Section 3 positively, mandatorily and uncondition-

ally excludes aliens afflicted with a loathsome or dangerous contagious disease and every reference to the provision is convincing that there has been no intention on the part of Congress to permit such aliens to land within the United States. The proviso can limit the section only to the extent that its plain wording determines. It says aliens returning to an unrelinquished domicile may be admitted in the discretion of the Secretary of Labor and under such conditions as he may prescribe. There is no positive statement in the proviso that such returning alien shall be permitted to land, while Section 3 states positively that he is unconditionally excluded.

Had it been the intention of Congress to give returning aliens an unconditional right to land, Congress might have so enacted.

The court said, in *Oceanic Navigation Co. v. Stranahan*, supra, page 333, that resort may be had to Senate reports to dispel ambiguity, if it be conceded. But ambiguity is not conceded. Senate Report No. 352, 64th Congress, 1st Session, accompanying H. R. 10384, which later became the Immigration Act of 1917, says:

> "The proviso conferring discretion upon the Secretary of Labor to readmit aliens who had gone abroad temporarily after declaring their intention to become citizens had been extended to include aliens not declarants who, after residing for several consecutive years go abroad temporarily, the purpose undoubtedly being the same the Senate had in view when it incorporated in H. R. 6060 a similar provision (see Senate Report 355, 63d Cong. 2nd Session) which was

> dropped in conference to wit, as a 'humane' provision to permit the readmission to the United States (under proper safeguards) of aliens who have lived here for a long time and whose exclusion after a temporary absence would result in a peculiar or unusual hardship."

That portion of Senate Report No. 355 above referred to is as follows:

> "As the term 'alien' has been defined in Section 1 of the Act (Act of 1917) and construed with reference to the Acts of 1903 by the Supreme Court (Lapina v. Williams, 232 U. S., 78), it seems only humane to invest the Secretary of Labor with authority to permit the readmission to the United States of aliens who have lived here for a long time and whose exclusion after a temporary absence would result in peculiar or unusual hardship."

It is very evident from these reports that Congress understood that the excluding provisions of Section 3 included all aliens, those seeking readmission as well as those seeking admission. Had the understanding been different there was no need for the proviso. And the reports show that the intention in investing the Secretary of Labor with discretionary authority contained in the proviso was to enable him to "permit the readmission to the United States of aliens who have lived here for a long time and whose exclusion after a temporary absence would result in a peculiar or unusual hardship," and reference was made to the construction by the court in *Lapina v. Williams,* supra.

Senate Report No. 352, supra, in reference to Section 9 of the Act of 1917, stated:

"This Section 9 of the existing law with the amount of the fine therein prescribed changed from $100 to $200 and with the addition of provisos for the imposition of a $25 fine for the bringing of a defective alien to United States ports, and a fine of $100 for bringing aliens not able to pass the illiteracy test, or who cannot become eligible to be naturalized, the method of regulation approved by the Supreme Court in *Oceanic Navigation Co. v. United States*, 214 U. S., 320, being availed of throughout the section. The palpable object of these provisions is to prevent hardships and other evils which arise from transportation companies selling tickets to aliens who cannot enter the United States. In addition to the foregoing, which were in H. R. 6060 when passed, the House Committee has added provisions which shall compel transportation companies which bring to the United States aliens who are of certain inadmissible classes to refund to such aliens the cost of their passage (see H. Rept. No. 95, 64th Cong., 1st Sess. pp. 6-7 and has included in the ground of the second $200 fine for the bringing of Hindus."

The same Senate Report relative to the proviso added to Section 9, we find:

"And at the Committee's suggestion there was also added on the floor of the House, Vol. 53, Cong. Record, page 5957 (should be page 5025) a proviso, the purpose of which is to make certain that the penalties prescribed by the section will not operate to prevent steamship companies from selling tickets to aliens entitled to enter under the exemptions specified in Section 3."

Immediately after the introduction of the amendment, Mr. Burnett, Chairman of the House Committee on Immigration, being asked if he desired recognition on the amendment replied:

> "I do not care to discuss it. I think its purpose is obvious. Some members of the committee expressed a doubt as to whether aliens who are fleeing from religious persecution would be permitted by the steamship companies to take passage on their vessels, even if they were admissible to this country. The committee were of the opinion that if they were admissible aliens there could not be any such thing as a penalty on the steamship company, but in order to leave no doubt about that matter the gentleman from New York (Mr. Siegel) offered an amendment, which the committee accepted, and this is that amendment. It is offered in order that there may be no doubt about it." (Vol. 53, Cong. Record page 5025).

It is clearly apparent that it was intended to absolve the transportation companies from liability for bringing in an alien only when the alien was entitled to admission into the country. There is nothing to intimate that there was any intention to absolve them when the alien was not admissible. It is clear that the intention of the statute was to make mandatory the duty of the transportation companies bringing aliens to this country to see to it that the aliens brought in by them were not afflicted with a loathsome or dangerous contagious disease. Congress has power to prohibit the bringing of aliens to this country and to impose any conditions to their admission, and vessels engaged in bringing aliens to this country must be held to undertake to do so on the conditions thus created, and to see that aliens carried by them to the United States are not members of any of the excluded classes. To allow aliens afflicted with the prohibited diseases to be returned to this country would defeat the purpose of the Act.

In *Oceanic Navigation Co. v. Stranahan*, supra, pp. 333-334, the court quoted from report of the Senate Committee on Immigration, (relative Act of 1903) as follows:

> "Notwithstanding the explicit prohibition of the present law, it has been found impossible to prevent the steamship companies from bringing diseased aliens to our ports. Once on this side, every argument and influence that can be used is resorted to, either to effect the landing of such aliens or their treatment in the hospital as a preliminary to such landing. Expert medical testimony is secured to attack the diagnosis of the examining surgeon and even to question the contagious nature of the disease. Pitiable stories are told of the separation of parents from young children to induce officers to relax in the discharge of their plain duty. Great charitable organizations intervene, and even political influence is invoked for the same purpose, the steamship companies themselves, either covertly or openly, displaying a spirit of resistence to the law. If all of these obstacles to the execution of the law fail of their purpose, and the alien afflicted with tuberculosis, favus, or trachoma is sent back, still by the willful or indifferent defiance of this sanitary law the design sought by its passage is defeated, for hundreds may possibly have been indeed, almost certainly have been—exposed to the disease in the steerage on the way over, may have been affected by it and landed before it has reached a stage of development sufficiently advanced to be detected by the medical inspector.
>
> "Section 10 of the measure under consideration (which in the final enactment became paragraph 9 of the law) therefore imposes a penalty of $100, to be imposed by the Secretary of the Treasury (now Secretary of Commerce and Labor), for each case brought to an American port, provided in his judgment the disease might have been detected by

means of medical examination at the port of embarkation. This sufficiently guards the transportation lines from an unjust and hasty imposition of the penalty, insures a careful observance of the law, and leaves in their own hands the power to escape even a risk of the fine being imposed, since they can refuse to take on board even the most doubtful case until certified by a competent medical authority to be entirely cured."

57th Con. 1st sess. S. Rept. No. 2119, p. viii;

57th Con. 2d. sess. S. Doc. No. 62."

It may be noted that the penalty to be imposed by the Secretary upon transportation companies for bringing to an American port an alien afflicted with a loathsome or contagious disease was by the Act of 1917 (Sec. 9) increased from $100 to $200; and by the Act of 1924 (Sec. 26) increased from $200 to $1,000.

The purpose of the mandatory provisions of our immigration statutes excluding aliens afflicted with loathsome or dangerous contagious diseases is to keep such aliens away from this country. And it is immaterial whether such an alien has previously acquired a residence or domicile in this country. The purpose of the provisions subjecting transportation companies to a penalty for wrongfully bringing to this country aliens so afflicted is to protect not only the passengers travelling with them, but ultimately to protect the people and citizens of the United States from the dangers arising from coming in contact with the alien so afflicted and also from the dangers arising from coming in contact with those who had been forced to associate with such afflicted alien aboard the vessel.

These dangers are just as pronounced and serious if the alien so afflicted is coming for readmission to an unrelinquished residence or domicile as if he comes seeking admission. An alien who has acquired a residence or domicile in this country is just as much an alien as if he had not made such acquisition. If an alien who has been in the United States and acquired a domicile goes away from the country and returns seeking readmission, he has no more right of re-entry than an alien who has never been in the country. And if such returning alien is afflicted with a loathsome or dangerous contagious disease or otherwise is a member of an excluded class, he is as positively excluded from readmission as he would be excluded from admission had he never before been in the country.

The alien returning to this country from a visit abroad may be admitted only in the discretion of the Secretary of Labor and it is repugnant to common sense to presume that a Secretary of Labor of the United States would permit an alien afflicted with such a loathsome and dangerous disease as leprosy to enter the United States, or would condone or hesitate to impose a penalty on a transportation company that would permit one so afflicted to mingle with other passengers on a voyage to this country. The mere fact that such an alien has acquired a domicile or residence in this country, but has not become a citizen, and had no right of return, and can reenter only at the discretion of the Secretary of Labor and on such conditions as he might prescribe, certainly would not secure the vessel and its officers from the

imposition of the penalty provided by law for such a flagrant violation of the well understood and universally recognized laws and rules of health and sanitation.

The hypothetical problem of Y. Ahin, mentioned at length on page 10 of appellant's brief, while in no way material here, is fully answered in Section 21 of the Act of 1917.

The case of *Compagnie Francaise de Navigation A Vaperu v. Elting, Collector of Customs,* (C. C. A. 2) 10 F2, 773, likewise is not material to the consideration of any question arising in the present case. In that case the only objection to the alien was his alienage. He did not return to this country afflicted with a loathsome or dangerous contagious disease, nor did he, while so afflicted, wrongfully mingle and come in contact with fellow-passengers on the voyage to this country, exposing them to possible contagion without their knowledge or consent. In that case the court said:

> "The plaintiff could not have known at the port of embarkation that the alien was inadmissible for that fact could be established only after a hearing by the immigration officials. * * * It can scarcely be supposed that Congress intended to penalize a vessel owner for transporting an alien privileged to come for such purpose."

It is well settled that the statutes should have sensible construction and one that will effectuate the legislative intention, and avoid if possible unjust and absurd conclusions.

Lau Ow Bew v. United States, 144 U. S. 47, 59;

United States v. Mrs. Gue Lim, 176 U. S. 459, 467;

United States v. Comr. of Immigration, (C. C. A. 1) 285 Fed. 295, 299.

It is submitted that the only sensible construction to be given the statute applicable in this case excluding aliens afflicted with a loathsome or dangerous contagious disease and penalizing a transportation company for bringing such an alien to an American port, is to exclude the alien and impose the penalty on the transportation company when the alien seeks readmission as well as when the alien merely seeks admission. This is the only construction that will effectuate the legislative intention and avoid unjust and absurd conclusions.

CONCLUSION

It is respectfully contended that aliens returning to an unrelinquished domicile of seven consecutive years do not constitute a class exempted from the excluding provisions of Section 3, and that the discretionary power given the Secretary of Labor by the Seventh Proviso authorizes the use of his discretion in admitting an alien returning to such a domicile only when such alien does not come within one of the classes expressly and mandatorily excluded by the provisions of that section; and that in this case the alien belongs to a class expressly and mandatorily excluded, and while many exceptions and exemptions are enumerated in the statute, none appear in favor of authorizing the admission of an alien afflicted with a loathsome or dangerous contagious disease; and that

whenever aliens so afflicted are mentioned or referred to in the statutes it is plainly evident that no intention was entertained for their admission. It is therefore respectfully submitted that the ruling of the District Court should be affirmed.

Respectfully submitted,

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